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M.S. CARRIERS

May 24, 1996

RECEIVED
MAY 31 1996
DOCKETING DIVISION
Public Utilities Commission of Ohio

RECEIVED
MAY 30 1996
TRANSPORTATION
ECONOMIC ANALYSIS

Public Utilities Commission
Transportation Department
180 E. Broad Street, 5th Floor
Columbus, OH 43215-3793

Re: Self Insured Status - Federal Highway Administration

To Whom It May Concern:

M. S. Carriers, Inc. has been approved for self-insured status for its bodily injury, property damage, and cargo liability by the Federal Highway Administration (FHWA). It is our intent to invoke that status effective June 1, 1996.

A copy of the FHWA decision is attached.

M. S. Carriers, Inc. would like to qualify in your state for self-insured status. We are requesting that you accept the FWHA's decision letter as evidence of financial responsibility, since security is already posted for them.

We would appreciate your acknowledging receipt of this request, and ask that you advise of further requirements for self-insured status.

Sincerely,

M. S. CARRIERS, INC.

Keith Hefley

Keith Hefley
Risk Manager

Enclosure

MAILING ADDRESS:
P.O. Box 30788
Memphis, TN 38130-0788

OFFICE ADDRESS:
3171 Directors Row
Memphis, TN 38131

Phone: 901/332-2500

88895.1:KEK

U.S. Department
of Transportation

**Federal Highway
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

May 15, 1996

Mr. Lee L. Piovarcy, Esq.
Martin, Tate, Morrow & Marston, P.C.
Suite 1100, The Falls Building
22 North Front Street
Memphis, TN 38103-1182

Re: Docket No. MC-145072
M. S. CARRIERS, INC.
Application to be a Self-Insurer

Dear Mr. Piovarcy:

This letter serves as notification to you that the Federal Highway Administration (FHWA) has approved NationsBank's Letters of Credit Nos. SA99785096 and SA99786096, including Amendment No. 1, submitted on May 1, 1996 and May 14, 1996, in compliance with the FHWA's decision served February 21, 1996, authorizing M. S. Carriers, Inc., to self-insure its $1 million statutory bodily injury and property damage (BI&PD) liability and $10,000 cargo liability.

You have requested permission to activate the self-insurance authority effective June 1, 1996.

The FHWA has found that M.S. Carriers, Inc., has complied with the requirements outlined in the FHWA's February 21, 1996, order for activation of its BI&PD and cargo liability self-insurance. Accordingly, FHWA records will be changed, effective June 1, 1996, to reflect that M.S. Carriers, Inc., is self-insured for $1 million statutory bodily injury and property damage liability and $10,000 cargo liability coverage.

If you have any questions, please contact Stanley Braverman on (202) 927-5540.

Sincerely,

Patricia A. Burke for
Thomas T. Vining, Chief
Licensing & Insurance Division

Post-it® Fax Note 7671 | Date 5/31/96 | # of pages ▶ 7
To FRAN NETTING | From KEITH HEFLEY
Co./Dept. | Co. M.S. CARRIERS
Phone # | Phone #
Fax # 614-728-2133 | Fax #

SERVICE DATE
FEB 21 1996

FEDERAL HIGHWAY ADMINISTRATION

DECISION

DOCKET No. MC-145072

M. S. CARRIERS, INC.
(Memphis, TN)

APPLICATION FOR AUTHORITY TO SELF-INSURE

Subject to certain conditions, applicant is authorized to self-insure its bodily injury and property damage liability and its cargo liability.

Decided: February 14, 1996

By application filed October 11, 1995, M. S. Carriers, Inc. (MSC or applicant), a motor carrier of property by the truckload, requested authority from the Interstate Commerce Commission to self-insure its bodily injury and property damage (BI&PD) liability, and its cargo liability under former 49 U.S.C. 10927 and 49 CFR 1043.5. MSC holds numerous authorities in Docket Nos. MC-145072 and MC-142020 to operate as a common and contract carrier by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting general and specified commodities, including commodities in bulk, between points in the contiguous United States[1]

By virtue of the ICC Termination Act of 1995, P.L. 104-88, the responsibility for making determinations regarding the self-insurance program and all authorizations pursuant thereto was vested in the Secretary of Transportation, and subsequently by delegation, in the Federal Highway Administration (FHWA).

MSC, headquartered in Memphis, TN, has been engaged in transporting a wide range of commodities, including packages, retail goods, non-perishable foodstuffs, paper and paper products, household appliances, furniture, and packaged petroleum products, in the eastern two-thirds of the United States, with primary flows

[1] MSC also holds a property broker license, which is not involved in the instant application.

between the Middle South and the Southwest, Midwest, Central States, Southeast and Northeast, and in the Canadian provinces of Ontario and Quebec, with interline service to Mexico.

Applicant is required to maintain security for the protection of the public in the minimum amount of $1 million per occurrence for BI&PD liability, and $5,000 per occurrence per vehicle ($10,000 aggregate) for cargo liability. Currently, applicant has in effect and on file with FHWA the requisite BI&PD and cargo liability security coverages. Applicant requests authority to self-insure its BI&PD and cargo claims up to the minimum required amounts. Applicant states that it is the company's intention to continue to maintain $99 million in BI&PD liability coverage in excess of the $1 million self-insured retention level. Applicant states that its total annual savings from self-insurance will be approximately $100,000 to $200,000.

In support of its application to self-insure, applicant has provided audited financial statements for the calendar years 1992, 1993 and 1994, as well as a copy of applicant's Form 10-Q Report to the Securities and Exchange Commission (SEC) for the first quarter of 1995. The pertinent data from the financial statements are as follows:

M.S. CARRIERS, INC.
PERTINENT FINANCIAL DATA
($000 omitted)

I <u>Profitability & Cash Flow</u>	12 Months ended 12/31/92	12 Months ended 12/31/93	12 Months ended 12/31/94
1. Operating Revenues	$181,303	$224,716	$292,883
2. Operating Expenses	160,929	199,680	263,222
3. Operating Income (1 2)	20,374	25,036	29,661
4. Ordinary Income	17,979	23,114	28.006
5. Net Income	10,574	14,102	17,150
1. Net Income	$21,865	$14,102	$17,150
2. Depreciation/Amortization	27,361	27,361	33,694
3. Cash Flow from Operations (1+2)	49,226	41,463	50,844
4. Debt Due Within One Year	7,304	6,000	16,694
5. Cash Throw-Off To Debt Ratio (3/4)	6.74	6.91	3.05
II. <u>Liquidity</u>			
1. Cash & Cash Equivalents	$46	$111	$30,807
2. Other Current Assets	24,948	31,909	42,978
3. Total Current Assets (1+2)	24,994	32,020	73,785
4. Current Liabilities	24,619	22,667	44,894
5. Working Capital (3-4)	375	9,353	28,891
6. Current Ratio (3/4)	1.02	1.41	1.64

III. Debt Structure

1. Long Term Debt Due After 1 Year	$32,693	$17,985	$51,187
2. Stockholders' Equity (Tangible)	71,969	131,939	147,924
3. Total Debt Plus Equity (1+2)	104,662	149,924	199,111
4. Debt To Debt-Plus-Equity Ratio(1/3)	31.24%	12.00%	25.71%

SOURCE OF DATA: Applicant M. S. Carriers, Inc.'s audited financial statements submitted with the self-insurance application.

MSC maintains a Safety Department whose duty it is to develop uniform safety policies and procedures, enforce policies and procedures adopted by the company, federal, state, and local authorities, develop an ongoing employee training and awareness program, ensure that MSC is in compliance with federal motor carrier safety regulations, and attempt to prevent accidents and personal injury. The Safety Department is headed by a Vice President for Safety and Risks who is assisted by a highly experienced Safety Manager and Assistant Safety Manager. Their duties include developing and maintaining uniform safety policies and procedures to ensure that the company is in compliance with federal motor carrier safety regulations. Applicant holds a "satisfactory" safety fitness rating from the U. S. Department of Transportation.

MSC maintains a centralized claims office located at its headquarters in Memphis, Tennessee. The claims department is administered by a highly experienced risk manager, assisted by a Senior Claims Examiner. The risk manager and his staff review and recommend action on all major claims, subject to final review and approval by the Chief Operating Officer and/or the Vice President of Safety and Risk. The applicant presently handles all cargo, trailer, and tractor physical damage claims within its $1 million deductible retention level and also handles, with its internal staff, all property damage losses involving third party claims. Bodily injury claims are reported to and handled by Lindsey Morden Claims Management, Inc. Although a substantial portion of the investigation of claims, assignment of outside adjusters, retention of counsel, and recommendation of settlement has been accomplished by the applicant, the applicant indicates that it plans to continue to use the services of an experienced insurance company to establish claim reserves and to settle serious claims. Applicant maintains a $1 million retention on all liability claims. The following data have been submitted by MSC providing the number of claims received between 1993 and the 1995 application date, by number of claims and aggregate of losses.

Period	BI&PD Claims[1] #	BI&PD Claims[1] Amount	Cargo Claims #	Cargo Claims Amount
1995	355	$3,721,002	615	$193,803
1994	884	6,780,694	385	347,531
1993	608	8,032,486	363	172,913
7-1-92 to 1-1-93	455	4,202,107	496	290,025

[1]For the period 7/1/92 through the date of filing of the application on 10/9/95, there was one BI&PD claim handled by the insurer in the amount of $3,109, which is still being held in reserve and has not been settled. There have been no other BI&PD claims or cargo claims handled by the insurer during that period.

DISCUSSION

The evidence presented warrants my finding that applicant has sufficient financial resources to support a grant of authority to self-insure its bodily injury and property damage, and its cargo liability.

The financial condition of MSC has improved in each of the three years, 1992, 1993 and 1994, for which audited financial records were submitted. The company's gross revenues have increased annually from $181.3 million in 1992 to $292.9 million in 1994, and its net income has been positive in each of the three years, increasing from $10.6 million in 1992 to 17.2 million in 1994. Although the cash-throw-off to debt ratio decreased somewhat between 1992 and 1994, it still reflected a favorable ratio of 3.05 for the last year.

In terms of liquidity, the applicant's working capital increased from $375,000 in 1992 to a very respectable $28.9 million in 1994, resulting in a current ratio for 1994 of 1.64. The results were evident in an improved tangible stockholders' equity which increased from $72.0 million in 1992 to $147.9 million in 1994, and in a favorable debt to debt-plus-equity ratio for 1994 of .2571 (25.71%).

The supplemental financial statement received for the first three months of 1995 also reflected a continuation of MSC's successful operations, with a reported net income of $3.8 million and an increase in tangible stockholders' equity to $151.7 million. I take particular note of the fact that the company was able to acquire new investment capital in 1993 of $45.8 million.

Based upon my analysis of the audited financial statements and the copy of SEC Form 10-Q provided, I conclude that MSC should be able to pay normal and recurring self-insurance claims from funds generated from operations and, if necessary, from working capital. However, as further assurance and in order to provide a source of reserve funds for any large unanticipated claims, I will require that applicant provide irrevocable letters of credit or trust funds in amounts of $1 million and $10,000 for payment of BI&PD and cargo liability claims, respectively, and that it maintain a minimum net worth of $2 million as further security for claimants. I will grant the application for authority to self-insure, subject to these and additional conditions imposed in previous self-insurance decisions.

I find:

Applicant's self-insurance of its BI&PD and cargo liabilities, subject to applicable conditions, will afford the security for the protection of the public contemplated by 49 U.S.C. 13906. This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

The application of MSC is granted, subject to the following conditions:

(1) Applicant must maintain an irrevocable letter of credit or trust fund agreement in a minimum amount of $1 million for BI&PD liability, and a separate letter of credit or trust fund in the minimum amount of $10,000 for cargo liability. Applicant must submit, within 60 days of the service date of this decision, a copy of the agreements establishing the letters of credit or trust funds. The FHWA must approve the terms of the letters of credit or trust agreements prior to their effective date. Any changes in their terms must be given prior approval by the FHWA. Furthermore, applicant must have unrestricted access to the letters of credit or trust funds, and drawdowns may be made only to satisfy claims for BI&PD or cargo liability, respectively. Any drawdown from the letters of credit or trust funds must be reported immediately to the FHWA, along with an explanation as to how applicant proposes to

respond to additional liability claims. Any drawdown from the letters of credit or trust funds must be replenished within 30 days, and any failure to replenish the amount of a drawdown within 30 days must be reported immediately to the FHWA.

To ensure the protection of the public, we will further require that any trust fund agreements contain the following provisions:

a. The trustees must be identified by name and address, and a statement must be given of their relationship to applicant.

b. The beneficiaries of the trust fund agreements must be designated clearly as BI&PD or cargo liability claimants, respectively, of applicant. No other parties may have rights of recovery against these respective funds.

c. The trust fund agreements must be established so that they may not be revoked until all cognizable claims arising during the time applicant holds FHWA authority to self-insure have been settled.

d. Payments under the trust fund agreement must be made directly to BI&PD or cargo claimants.

(2) Applicant must maintain at all times a tangible net worth of at least $2 million and must notify the FHWA at any time, during the effectiveness of the self-insurance authorization, if its net worth balance falls below the $2 million minimum. If this occurs, applicant will then have 30 days to correct the situation or face termination of the authority to self-insure.

(3) Applicant must submit quarterly and annual financial statements to the FHWA within 60 days and 90 days, respectively, after the end of each period during the time the self-insurance authorization is in effect. The financial statements must include a certification from an appropriate official of applicant verifying the accuracy of the information provided. MSC must also submit to the FHWA copies of the quarterly forms 10-Q and the annual report Form 10-K required to be filed by it with the Securities and Exchange Commission together with a certification of the accuracy of such reports and copies by an appropriate carrier official.

(4) Applicant must file with the FHWA quarterly claims reports detailing the number, aggregate dollar amount, and the nature of its claims experience. Applicant must also submit quarterly reports detailing pending court cases or other actions which relate to or arise from its claims experience. Again, an appropriate official of applicant must certify the accuracy of these reports.

(5) Applicant must notify the FHWA immediately of any pending or contingent BI&PD liability claim(s) which individually exceeds

$50,000 or collectively exceed $250,000, or any cargo liability claim(s) which individually exceeds $25,000.

(6) Applicant must notify the FHWA, no later than 90 days prior to the effective date, of any change in the terms or cancellation of the letter of credit or trust fund agreements, and must notify the FHWA of the renewal of the letters of credit or trust fund agreements no later than 6 months prior to their expiration dates.

(7) Applicant must notify the FHWA within 5 days upon default of any terms of any loan agreements that exist with financial institutions. Full disclosure should be provided about the consequences, actual or potential, of such default. Any default could be cause for termination of self-insurance authority.

(8) The FHWA retains the authority to terminate its self-insurance authorization at any time if it appears to the FHWA that applicant's financial arrangements fail to provide satisfactory protection for the public, or applicant fails to file timely any of the information required by the FHWA.

(9) The FHWA has the right to require applicant to submit any additional information the FHWA deems necessary.

(10) This decision is effective on its date of service. Applicant, however, may not activate its self-insurance authorization less than 30 days after submitting documents to the FHWA demonstrating that the required letters of credit or trust funds have been established. Applicant must also notify the FHWA of the date on which it will activate its self-insurance authority.

By the Federal Highway Administration. John F. Grimm, Director, Office of Motor Carrier Information Analysis.